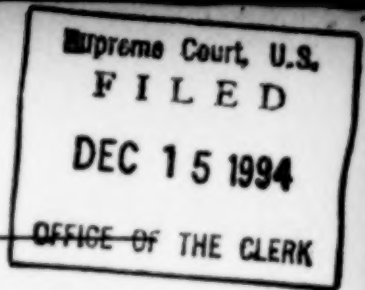


No. 94-23



IN THE  
Supreme Court of the United States  
October Term, 1994

CITY OF EDMONDS,

Petitioner,

v.

WASHINGTON STATE BUILDING CODE COUNCIL,  
et al.,

Respondents.

Writ of Certiorari to the United States  
Court of Appeals for Ninth Circuit

BRIEF AMICUS CURIAE OF CITY OF MOUNTLAKE TERRACE  
WASHINGTON IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

The City of Mountlake Terrace,  
Washington, as amicus curiae, is a political  
subdivision of the State of Washington, and

submits this brief in support of the City of Edmonds, petitioner. Counsel for amicus curiae is an authorized law officer of the City and consent to this submission is not necessary, however counsel has received consent from petitioner. Rules of the Supreme Court of the United States 37.5.

The City of Mountlake Terrace border is contiguous to its neighbor the City of Edmonds, and the City of Mountlake Terrace has adopted substantially the same definition of family as the City of Edmonds. Mountlake Terrace City Code, Section 10-3.2(39) defines family as:

One or more persons related by blood, marriage, adoption or a group of not more than six (6) persons not related by blood or marriage living together in a single housekeeping unit in a dwelling unit.

In March 1994, the Oxford House, an unincorporated association, established a group home within the city limits of Mountlake Terrace consisting of residents unrelated by blood, marriage or adoption,

exceeding the maximum number of unrelated occupants permitted to occupy a dwelling located in an area zoned for single family within the City of Mountlake Terrace. As appears to be the case in the Edmonds situation, the Mountlake Terrace occupants are capable of independent living and voluntarily live together and operate the house located within the area zoned single family residence. Because of the action initiated by the City of Edmonds and the Ninth Circuit Court of Appeals decision, there has been no enforcement action commenced against the Oxford House-Mountlake Terrace. The Mountlake Terrace matter has been held in abeyance pending final resolution by this court.

The City of Mountlake Terrace is a small community consisting of approximately 20,000 residents, has limited resources, and finds itself now faced with potentially expensive



and time consuming litigation regarding what constitutes "reasonable accommodations." If the Ninth Circuit is upheld in its decision, the City of Mountlake Terrace, as well as many other cities will be placed in the position of either redrafting the ordinances to provide for a maximum number of occupants on the basis of habitable floor area in a dwelling or establishing a fixed maximum number of occupants without regard to whether they are related. The former would not preserve the ability of large families to live together and the latter is likely to be subject to challenge as a violation of the protections afforded by the Due Process Clause of the Fourteenth Amendment.

#### SUMMARY OF ARGUMENT

The plain language of the FHAA provides that certain regulations are exempt from FHAA's provisions. FHAA's provisions do not apply to "reasonable local, state or federal

restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. Section 3607(b)(1). Edmonds' zoning ordinance, while recognizing the Fourteenth Amendment protection that is extended to family, clearly provides for a reasonable restriction regarding the maximum number of occupants permitted to occupy a dwelling. Therefore Edmonds' zoning ordinance is exempt from the FHAA's provision.

#### ARGUMENT

##### I.

**EDMONDS' SINGLE FAMILY ZONING ORDINANCE PROVIDES A REASONABLE LOCAL RESTRICTION ON THE MAXIMUM NUMBER OF OCCUPANTS PERMITTED TO OCCUPY A DWELLING AND CONSEQUENTLY IS EXEMPT, BY THE ACT'S OWN CLEAR LANGUAGE, FROM THE FHAA PROVISIONS.**

Not all regulations are subject to the provisions of the Fair Housing Act Amendments

(FHAA). Reasonable local restrictions on the maximum number of occupants permitted to occupy a dwelling are expressly exempt from the FHAA's purview. 42 U.S.C. section 3607(b)(1). Like the City of Mountlake Terrace and numerous other communities throughout the country, Edmonds permits a maximum number of unrelated persons to live in a single family dwelling unit within its city limits. ECDC 21.30.010.

42 U.S.C. 3607(b)(1) specifically and in plain language exempts from its provisions reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. The City of Edmonds' ordinance falls within this statutory exemption under Title 42 U.S.C. 3607(b)(1) since it permits five or fewer unrelated persons in the City's single family residential areas and consequently the ordinance restricts the maximum number of

occupants as it pertains to unrelated individuals who may occupy a single family dwelling. Therefore, if the ordinance is reasonable, it is exempt from the FHAA. The fact that the ordinance makes a distinction based on whether the occupants are related does not diminish or negate the fact that there is a clear restriction on the maximum number of unrelated occupants. The Edmonds ordinance treats all unrelated individuals who chose to live together in a single family residential area equally, disabled or non-disabled, black or white, male or female, rich or poor.

The distinction between related and non-related inhabitants in the Edmonds ordinance is simply an acknowledgement that the Due Process Clause of the Fourteenth Amendment extends its protection to the family. The City of Edmonds' definition of family follows the form approved by this court in Village of

Belle Terre v. Boraas, 416 U.S. 1 (1974).

The ordinance adopted by Edmonds merely recognizes the ruling as set forth in Moore v. City of East Cleveland, 431 U.S. 494 (1977) in extending the benefits and protections of its single family zone to the extended family.

The City of Edmonds has a legitimate interest in preserving and maintaining the character of its single family areas. The ordinance is a reasonable restriction on the maximum number of occupants who may occupy a dwelling. As this court has already recognized, the City may exercise its police powers to "lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." Village of Belle Terre v. Boraas, 416 U.S. 1 at 9. This legitimate interest in the tranquility of single family residential areas has also been

recognized in City of Memphis v. Greene, 451 U.S. 100 (1981). Because of Edmonds' recognized legitimate interest in establishing, preserving and maintaining the character of its single family neighborhoods, the ordinance is reasonable and since it is a restriction on a maximum number of people who may occupy the dwelling, is exempt from the FHAA.

#### CONCLUSION

The City of Mountlake Terrace submits that the Edmonds zoning ordinance is exempt from the FHAA's provisions as a reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling and that the Ninth Circuit Court of Appeals should be reversed.



DATED: December 15, 1994.

Respectfully submitted,

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